NOMINATION OF RONALD P. WERTHEIM

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

NOMINATION OF RONALD P. WERTHEIM TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

DECEMBER 9, 1981

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NOMINATION OF RONALD P. WERTHEIM

WEDNESDAY, DECEMBER 9, 1981

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:50 a.m., in room 5110, Dirksen Senate Office Building, Hon. Charles McC. Mathias, Jr., presiding.

Present: Senator Mathias.

Staff present: Eileen Mayer, chief counsel; Margaret Crenshaw, minority chief counsel; Margaret Hecht, professional staff member; and Christine Sarcone, chief clerk.

OPENING STATEMENT OF SENATOR MATHIAS

Senator MATHIAS [acting chairman]. The Chair is advised that Senator Specter is on his way, and therefore, the committee will come to order.

This morning the Governmental Affairs Committee holds a hearing on a judicial nomination for the Superior Court of the District of Columbia. On October 19, President Reagan nominated Ronald P. Wertheim to be an associate judge of the Superior Court of the District of Columbia.

The nominee has been extremely cooperative with members of the committee and members of the staff in complying with the various procedures that we have established for judicial nominations.

This nomination has been the subject of a very careful review. In 1978 the committee adopted rule No. 8 which contains the requirements which must be met on all confirmations subject to committee evaluation. This rule requires the committee to conduct an inquiry into the nominee's experience, qualifications, suitability and integrity to serve in the position for which nominated.

The commttee believes that this rule insures a thorough, yet reasonable, review of the nominee's background and qualifications. I will take this opportunity to briefly recount for the record the steps the committee has taken on the nomination prior to the hearing today.

First, in response to our request, the nominee supplied detailed information on his education, employment and achievements, as well as a complete financial statement and tax returns for the past 3 years. The financial statement and biographical information of Mr. Wertheim are available for inspection by the public in the committee office.

Now, without objection, the biographical information will be placed into the record of the hearing.

[The biographical data of Mr. Wertheim follows:]

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

BIOGRAPHICAL INFORMATION

Question 1. Name: (Include any former names used.)
Answer. Ronald P. Wertheim.
Question 2. Address: List current residence address and mailing address.
Answer. 3230 Highland Place, N.W., Washington, D.C. 20008.
Question 3. Date and place of birth.
Answer. September 7, 1933, Philadelphia, Pennsylvania.
Question 4. Marital status: (Include maiden name of wife or husband's name.)
Answer. Married to Mitzi Mallina Wertheim.
Question 5. Names and ages of children.
Answer. Carter Dewey Wertheim, age 14; Christiana Wertheim, age 11.
Question 6. Education: List institution(s), dates attended, degree received and date degree granted.
Answer. Mount Hermon School, Mt. Hermon, Mass., 1947–1950, Diploma 1950; Wharton School of Finance and Commerce, University of Pennsylvania, 1950–1954, B.S. in Economics 1954; University of Pennsylvania Law School, 1954–1957, J.D. 1957; Hague Academy of International Law, 1962, Diploma 1962.
Question 7. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.
Answer (a) Associate in law firm of Dechert, Price & Rhoads, Philadelphia, Penna., 1957–1959; (b) Assistant Defender, Defender Association of Philadelphia, 1959–1961; (c) Assistant then Associate Professor of Law, University of Virginia Law School, Charlottesville, Virginia, 1961–1964; (d) Deputy General Counsel of the Peace Corps, Washington, D.C., 1964–1966; (e) Associate Peace Corps Director in Brazil, located in Fortaleza and Rio de Janeiro, Brazil, 1966–1968; (f) Director, Legal Studies Curriculum Program, Education Development Center, Inc., Cambridge, Mass., 1968–1969; (g) Associate 1969–1974, Partner 1975–1979, in law firm of Ginsburg, Feldman & Bress, Washington, D.C.; (h) Advisor to Secretary of Defense for Law of the Sea Negotiations, Director of the Defense Department Task Force on the Law of the Sea, and Alternate U.S. Representative to the 6th United Nations Conference on the Law of the Sea, May–October 1977 (on leave from Ginsburg, Feldman & Bress); (i) Member, U.S. Merit Systems Protection Board, 1979 to present (appointed by President Carter with Senate confirmation).
Question 8. Government experience: List any experience in, or association with Federal, State or local governments, including any advisory, consultative, honorary or other part-time service or positions.
Answer. Please see paragraphs (a), (e), (n), and (i) in response to the previous question. In addition, I served as Special Counsel to the Secretary of Housing and Urban Development on legal issues concerning the Federal National Mortgage Association, in 1978–1979; and since 1979 I have served as a Member of the Secretary of State's Public Advisory Committee on the Law of the Sea. Also, I have been a Liaison Member of the Administrative Conference of the United States since 1980.
Question 9. Business relationship: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation company, firm partnership or other business enterprise educational or other institution.
Answer. Partner, Ginsburg, Feldman & Bress, Washington, D.C., 1975–1979 (law firm); Limited partner, Sweet Owen-USP Associates, Ltd., St. Louis, Missouri (investment only); Trustee, Arena Stage, Washington, D.C., since 1971 (non-profit); Trustee and Secretary, Associates for Renewal in Education, Inc., Washington, D.C., 1970–1979 (non-profit); Trustee, Capital Children's Museum Washington, D.C., 1973–1977 (non-profit).
Question 10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable and other organizations.
Answer. Current: District of Columbia Bar, member; Pennsylvania Bar, member; U.S. Supreme Court Bar, member; Cleveland Park Club, member; Washington Society of British History Buffs, member; Arena Stage, trustee; Sharswood Law Club, member.

Former: Chairman, Membership Service Committee, D.C. Bar; Vice-Chairman of the Junior Bar, Philadelphia Bar, Association; American Bar Association, member; Federal Bar Association, member; American Civil Liberties Union, member; American Society of International Law, member; N.A.A.C.P., member; Americans for Democratic Action, member; Students for Democratic Action, national chairman; Washington Alumni Club of University of Pennsylvania Law School, president; U.S. Naval Institute, member; U.S. Strategic Institute, member.

Question 11. Political affiliations and activities: List all offices with a political party or any public office for which you have been a candidate. List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Answer. I have never held an office with a political party or been a candidate for elective public office. I am a registered Democrat. In 1976, I served on the legal drafting subcommittee of the Bylaws Committee of the General Counsel to the Democratic National Committee.

I have made the following financial contributions to political parties or election committees during the last 10 years: Democratic National Committee 1972, 1976, $100; Carter-Mondale Committee 1976, $100; Sargent Shriver Committee, 1972, 1976, $100; Stanley Salett for School Board, Howard County. Maryland, 1978, $50; Cliff Alexander for Mayor, D.C. 1974, $50; D.C. Democratic Committee, 1978, $25; Hardy Williams for Congress, Philadelphia 1980, $100; Various D.C. School Board and City Council candidates, maximum, $25.

Question 12. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievements.

Answer. 1981 Public Service Citation of the Hispanic Organization of Professionals and Executives (HOPE) for my "contribution in setting high legal standards at the Merit Systems Protection Board by . . . scholarly excellence"; Editor-in-Chief, Univ. of Penna. Law Review, 1956–1957; American Jurisprudence Prize in Constitutional Law, 1956; American Jurisprudence Prize in Labor Law, 1957; Academic scholarships 1950–1957, Univ. of Penna.; Pi Sigma Alpha, political science honorary society; Beta Gamma Sigma, business administration honorary society; Fellow, Salzburg Seminar in American Legal Institutions, 1960.

Question 13. Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Answer. Numerous decisions of the Merit System Protection Board, which appear in Volumes 1 and 2 of MSPB Reports (GPO 1980) or are available from the MSPB Secretary; Book Reviews, An Inquiry Into Criminal Guilt and Law, Liberty and Psychiatry, 64 Coolumbia Law Review 977 (1964); Handbook of Procedure in the Juvenile Court, Philadelphia Junior Bar Association (1961).

Question 14. Speeches: Provide the committee with two copies of any formal speeches you have delivered during the last 5 years which you have written copies of and which are on topics relevant to the position for which you have been nominated.

Answer. None.

Question 15. Selection: a. Do you know why you were chosen for this nomination by the President?

b. What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Answer. (a) I was one of three lawyers recommended to the President for this nomination by the District of Columbia Judicial Nomination Commission. The Commission's Chairman, Mr. Frederick B. Abramson, informed me that the Commission's recommendations were made "strictly on merit." I have not been specifically informed as to why the President selected me among the three, but the Deputy Counsel to the President, Mr. Richard A. Hauser, advised me that the President's guiding criterion was "competence."

(b) In over 20 years at the Bar, I have had experience in a broad range of both civil and criminal practice, with considerable litigation experience at trial and appellate levels in State courts, Federal courts, Federal multidistrict proceedings, and before administrative and other adjudicative bodies. This experience has included 2 years as a public defender appearing almost daily in the criminal courts of Philadelphia; a wide variety of personal injury and complex business litigation for both plaintiffs and defendants; the successful appeal of

one of the principal Watergate conspiracy defendants; an extensive trial-type hearing before the Senate Select Coommittee on Ethics; and numerous matters involving tax law, securities law, administrative and economic regulatory law, probate law, labor law, international law, discrimination law, and public personnel law.

This breadth of legal experience, as well as my work in the Peace Corps and in assisting local nonprofit educational organizations, has exposed me at firsthand to people in many different walks of life—economic, education, cultural, social, ethnic and racial. I believe this exposure has helped to provide an essential element of judicial temperament: an ability and willingness to understand many perspectives and viewpoints on all sides of issues.

In addition, my work as editor-in-chief of the Law Review at the University of Pennsylvania and later as a professor of law at the University of Virginia (teaching evidence, criminal law, and international law) has given me a lifelong interest in the development of law and legal institutions. The caseload of the Superior Court may not allow for much indulgence in scholarship, but with diligence my experience and aptitudes may enable me to make some contribution in this important area.

The difficulties of writing a number of substantial legal opinions while managing a massive caseload are familiar to me from my work during the past two years as a Member of the Merit Systems Protection Board, which is a quasi-judicial position in which I have been responsible for major precedential decisions interpreting the Civil Service Reform Act of 1978. That experience also has taught me the vital discipline in a judicial role of addressing all controversies with patient even-handedness, calm and objective analysis of the facts and the law, due regard for the public interest, and courtesy to all litigants and affected persons.

B. FINANCIAL DATA

(Retained in Committee Files.)

C. FUTURE EMPLOYMENT RELATIONSHIPS

Question 1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Answer. Yes.

Question 2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Answer. No.

Question 3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

Answer. No.

Question 4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

Answer. No.

Question 5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Answer. Yes.

D. POTENTIAL CONFLICTS OF INTEREST

Question 1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

Answer. None other than as described in response to Question 8 of Section B above.

Question 2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Answer. None, other than any matters in which International Business Machines Corporation may become a party while my wife is employed by that corporation in an executive capacity.

Question 3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of

a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

Answer. None, other than matters in which any party is represented by my former partners in the law firm of Ginsburg, Feldman & Bress.

Question 4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

Answer. None, other than legal representation of clients on the record before courts and administrative agencies and my official duties since 1979 as a Member of the Merit System Protection Board.

Question 5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Answer. By recusing myself from participation in any particular matter that raises any potential conflict of interest, or otherwise in accordance with the requirements of law and judicial ethics, including any matter in which my wife's employer is a party, and any matter in which a party is represented by one of my former law partners during a period of 10 years from the date of my resignation from that partnership (i.e., until September 1, 1989).

Question 6. Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any other legal barriers to your serving in this position?

Answer. Yes, if requested.

E. LEGAL MATTERS

Question 1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

Answer. No.

Question 2. Have you ever been investigated, arrested, or charged or held by any Federal, State or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

Answer. No.

Question 3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Answer. No, other than one lawsuit in which all Members of the Merit Systems Protection Board including myself were sued individually, as well as in our official capacities, by a party who had been unsuccessful in proceedings before the Board. In that case, *Vincent T. Oliver* v. *Merit Systems Protection Board et al.*, Civil Action No. 80–1918, the U.S. District Court for the District of Columbia, in a decision issued October 13, 1981, dismissed the complaint with prejudice, finding that plaintiff's allegations against the individual defendants including myself were "wholly unsubstantiated" and that dismissal was appropriate to "ensure that Federal officials are not harassed by frivolous lawsuits."

Question 4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

Answer. No.

Question 5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

Answer. None that I know of.

F. QUESTIONS CONCERNING STATUTORY QUALIFICATIONS, PURSUANT TO DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970, SEC. 11–1501(C) OF THE D.C. CODE AS AMENDED

Question 1. Are you a citizen of the United States?

Answer. Yes.

Question 2. Are you a member of the bar of the District of Columbia?

Answer. Yes.

Question 3. Have you been a member of the District of Columbia bar for at least 5 years? (Give year in which you became a member.)

Answer. Yes, since 1969.

Question 4. If the answer to No. 3 is "no"—

(a) Are you a professor of law in a law school in the District of Columbia?

(b) Are you an attorney employed in the District of Columbia by the United States or the District of Columbia?

(c) Have you been eligible for membership in the bar of the District of Columbia for at least 5 years?

(d) Upon what grounds is that eligibility based?

Answer. Not applicable, since the answer to No. 3 is "yes."

Question 5. Are you a bona fide resident of the District of Columbia?

Answer. Yes.

Question 6. Please state the addresses of your actual place of abode (including temporary residences) with dates of occupancy for the last 5 years.

Answer. July 1977 to present: 3230 Highland Place, N.W., Washington, D.C. 20008. February 1969 to July 1977: 3685 Upton Street, N.W., Washington, D.C. 20008.

Question 7. Have you maintained an actual place of abode in such area for at least 5 years?

Answer. Yes.

Question 8. Are you a member of the District of Columbia Commission or Judicial Disabilities and Tenure or the District of Columbia Judicial Nomination Commission?

Answer. No.

Question 9. Have you been a member of either Commission within the last 12 months?

Answer. No.

G. STATUS OF TAX LIABILITY

Question 1. Would you state for the record whether all your taxes, Federal, State and local, are current as of this date?

Answer. Yes.

Question 2. Are you or any member of your immediate family presently involved in any controversy or litigation with tax authorities of the Federal Government, the District of Columbia, or any State or local governments?

Answer. No.

Question 3. Have you or any member of your immediate family ever been involved in such controversy or litigation at any time in the past with any Federal, District of Columbia, State or local government?

Answer. No.

Question 4. Have any tax liens, either Federal, District, State or local been filed against you or against any real property or personal property which you own either individually, joint or in partnership?

Answer. No.

Question 5. Have your taxes always been paid on time?

Answer. Yes.

AFFIDAVIT

I, Ronald P. Wertheim, do swear that the information provided in this statement and in the attached Financial Data is, to the best of my knowledge, true and accurate.

October 27, 1981. RONALD P. WERTHEIM.

My commission expires April 14, 1986.

ROBERT S. TAYLOR,
Notary.

Senator MATHIAS. The committee also reviewed the nominee's biographical and financial information, as well as reports submitted by the Office of Judicial Ethics.

Following that, the Senator from Missouri, Mr. Eagleton, the ranking minority member of the District of Columbia Subcommittee, reviewed a summary of the FBI report prepared on the nomination.

I have also reviewed the same report.

Finally, the nominee was interviewed by designated committee staff members who then submitted a report to members of the committee

containing all relevant information concerning Mr. Wertheim's qualifications for the position to which he has been nominated.

The committee is privileged to have the very able Senator from Pennsylvania, Mr. Specter, who will introduce the nominee.

Senator Specter, you may proceed.

TESTIMONY OF HON. ARLEN SPECTER, U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman.

I find this a great pleasure to step forward with a colleague of many years' standing, Mr. Wertheim, who was a young lawyer with me in the city of Philadelphia a few years ago and joined me as a young public servant.

Senator MATHIAS. I see two young lawyers now sitting at the witness table.

Senator SPECTER. Precisely.

Mr. Wertheim brings to the Superior Court of the District of Columbia a very distinguished background. He was an honor student in the top of his class at the University of Pennsylvania, Wharton School of Finance and Commerce. He graduated in 1954 and was graduated from the University of Pennsylvania Law School, where he was editor in chief of the University of Pennsylvania Law Review, which is a very high distinction, indeed.

He then practiced law where I had already obtained a year of experience. He showed an aptitude for public service, leaving the comforts as well as the high salary and the enormous potential, to become an assistant voluntary defender.

He has since that time forsaken Philadelphia for other places. He has served in the Peace Corps. He was in Brazil, as I noted from his résumé, and he served as a Deputy General Counsel to the Peace Corps.

He has been associated with the practice of law in Washington, D.C., with a fine law firm. He has been counsel to the Secretary of Defense and other top governmental posts.

I think it is a real tribute to Ron and a real benefit to the people of the District of Columbia that he is willing to accept this appointment as a judge on the Superior Court of the District of Columbia.

He has superb qualifications and an extraordinary background. I know that he will distinguish himself in this judicial post.

Yesterday's press had a comment about another judicial appointment to the Court of Appeals for the District of Columbia, and I have not seen a comparable billing as judge-to-be Wertheim, but there is speculation of a future appointment to the Supreme Court of the United States, and Judge Wertheim would take a back seat to no one.

Senator MATHIAS. Earlier we were regretting that Mr. and Mrs. Wertheim's children were not here. I was assuring them that there would be another occasion on which they could participate in a hearing of this sort, and perhaps the nomination to the Supreme Court would be an appropriate occasion to have them miss a day of school.

Senator SPECTER. Yes. Thank you.

Senator MATHIAS. Thank you very much.

Senator SPECTER. It is a pleasure to be here.

Senator MATHIAS. Thank you.

Now, Mr. Wertheim, according to the rules of the Governmental Affairs Committee, all witnesses in nomination hearings must give their testimony under oath. So I will now ask you to stand and take the oath.

[The witness was duly sworn.]

TESTIMONY OF RONALD P. WERTHEIM, NOMINEE TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Senator MATHIAS. First of all, is there anything of which you are aware in your background, professional or personal, which might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. WERTHEIM. No, sir.

Senator MATHIAS. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging your responsibilities as a judge in the court to which you have been nominated?

Mr. WERTHEIM I do not, sir.

Senator MATHIS. If confirmed by the Senate, would it be your intention insofar as you can see into the future now—and none of us have very much ability to see very far into the future—but to the extent that you can anticipate, is it your intention to serve the full 15-year term of office?

Mr. WERTHEIM. Yes, sir, subject, of course, to such inducements as you and Senator Specter offered for the future.

Senator MATHIAS. Those would, of course, I'm sure, affect your intentions. That's why I gave you plenty of leeway.

Mr. WERTHEIM. Yes, sir.

Senator MATHIAS. Have you ever been involved in civil litigation or administrative or legislative proceedings of any kind, either as the plaintiff, defendant, respondent, witness or party in interest, which is directly or indirectly related to the office to which you are now nominated?

Mr. WERTHEIM. No, sir.

Senator MATHIAS. Have you or any member of your immediate family ever been involved in any controversial litigation with tax authorities of the Federal Government, the District of Columbia, or any State or local government?

Mr. WERTHEIM. No, Mr. Chairman.

Senator MATHIAS. Will you please tell the committee very briefly, a little of your background in your own words, such as your educational and employment experience, and also identify the elements in your experience that you believe qualify you for an appointment to the bench of the Superior Court of the District of Columbia.

Mr. WERTHEIM. Yes, Mr. Chairman. The broad outlines of my experience were touched on by Senator Specter earlier.

In addition to formal education at the University of Pennsylvania, I also had the practice of law in Philadelphia and as an assistant voluntary defender in that city, a position equal to what here is the public defender.

I have taught law for 3 years at the University of Virginia School of Law, where among other subjects I taught evidence and advanced criminal procedure.

I served in Government both as Deputy General Counsel of the Peace Corps and for the past 2 years as a member of the Merit Systems Protection Board. The latter position is a quasi-judicial role in which, among other functions, I have been called upon to interpret the Civil Service Reform Act as it applies to Federal employees is a number of decisions which are the first interpretations of that statute, and that particular experience has been quite comparable to a judicial one.

My private law practice experience for 10 years in Washington before coming to the Merit Systems Protection Board exposed me to a wide range of the types of cases, civil, criminal, trial, appellate, Federal regulatory, complex business matters, and I think the combination of these different varieties of legal experience and my role at the Board, as well as my personal inclinations toward dispassionate analysis of issues, have given me about as broad a background as one might need for a court like the Superior Court.

It has also exposed me to people of very different social, economic, racial circumstances and helped me to recognize that every person before a judicial body is entitled to the same courtesy and dignified treatment as any other person, regardless of the number of dollars that might be involved in the matter at issue.

I think that is a very important aspect of the judicial temperament.

Senator MATHIAS. Thank you.

Mr. WERTHEIM. Yes, sir.

Senator MATHIAS. I think it is.

Following up on that, in your various professional capacities, you have had a degree of litigation experience which is essential for a trial judge, it seems to me. What do you view as the role of judges in the training and education of members of the bar?

Mr. WERTHEIM. I think to the extent that judges' judicial duties permit, it would be an important responsibility of any judge to contribute as much as possible to the training of the bar, both in law schools and among practitioners. There are many judges who observe quite a few lawyers that appear in courts, in many different courts across the land, who do not appear adequately prepared for their responsibilities, whether it is in terms of the time they devoted or to their formal training.

My own inclination would be that the courts should be a little more demanding as to the level of professional competence they expect of attorneys appearing before them, not only in dealing with attorneys in court, but also in assisting as much as possible in law school training and assistance in clinical programs and formal education.

I see no reason why an incompetent attorney should be inflicted any more on a court than on his client.

Senator MATHIAS. I certainly agree with that. I hope that you will adopt that as a principle of courtroom conduct when you are on the bench.

Mr. WERTHEIM. Yes, sir.

Senator MATHIAS. By that, I don't endorse the attitude of some judges, who I think are bullies, who sit on the bench and use their posi-

tion to embarrass young lawyers, inexperienced lawyers, or people whose only shortcoming is really the lack of the kind of maturity that only experience can give them I think that kind of courtroom bully is probably negative in training the bar.

I am reminded of my own experience with a judge in Maryland, Judge Prescott, who was for many years a member of the Circuit Court for Montgomery County and later became judge of the Court of Appeals of Maryland, which is their highest court. Judge Prescott, although he had a rather fiery temper, was extremely patient and helpful with young lawyers. He never embarrassed them in front of their clients or in front of the courtroom audience.

If some question in his mind arose he would ask counsel to approach the bench. I have had this experience with him myself. He would say, "That is a novel doctrine of law. Maybe you could explain it to me." In a very patient and helpful way he brought young lawyers along.

I think that this can be an extremely important responsibility of the bench.

Mr. WERTHEIM. I agree entirely with that view, Senator. I hope what I said earlier did not suggest that I would endorse any lack of proper patience with all attorneys or any of the parties.

Senator MATHIAS. I didn't take it that way. I was really thinking of Judge Prescott's remarkable ability to lead the bar, not because he did not have a strong temper and not because he was not a strict disciplinarian or did not have very high standards of excellence, but also had the kind of personality by which he could bring the bar along with him.

Mr. WERTHEIM. I would aspire to that model, sir. I did not have the good fortune of knowing Judge Prescott. I have known a few other judges of all varieties, including some whose conduct on the bench was very similar. I think that is a good model.

I have had an interest in legal education for a good many years. I would hope that there would be the opportunities to fulfill that interest from the bench, as well.

Senator MATHIAS. One of the essentials of a good judge, of course, is his judicial temperament.

Mr. WERTHEIM. Yes.

Senator MATHIAS. I suppose judicial temperament defies very close definition. How would you define this?

Mr. WERTHEIM. I think I would probably consider two elements that are essential. One is not only a willingness, but an inclination to defer judgment until one has heard a variety of sides of any issue. That is something I think most people either have or they do not have, or if they do not have it, they may acquire it through experience, and they will discover very frequently what you hear or read on a particular subject, however persuasive it may be, looks very different after you have heard a different viewpoint.

The second element that strikes me as essential is a capacity to treat with patience and fairness all of those involved in a controversial matter. Frequently there are emotional matters that do end up in court, matters of great importance to the litigants; they are important or they would not be there.

Litigation is major surgery for most people. It is almost a disaster in their lives. Those are highly emotional circumstances where money or liberty is at stake. I think it is important to any judge that he have the capacity to maintain a sense of dignity in the conduct of the proceeding, which I do not believe he can do if he does not treat with dignity the people that are involved, from whatever walk of life.

So those two features may not be sufficient, but I certainly think they are essential elements of judicial temperment.

Senator MATHIAS. There is one area of judicial temperment that involves your family as well as yourself. That is that in the present budget crunch, judicial salaries will probably not be as high as those of practicing attorneys. This is a sacrifice that we ask judges to assume. I cannot promise you any early relief from this situation.

Does that give you cause for any problem?

Mr. WERTHEIM. I have had the limitations of Federal service for the past 2 years in the Merit Systems Protection Board. That is a matter that I had to consider when I accepted that position.

One aspect, I suppose, of that reflects the liberation of women. My wife is not merely employed, but has a career without which it might have been much more difficult for me to have forsaken private practice 2 years ago, and I anticipate I will continue to do so.

Now, short of major problems of health for a member of my family that would totally change my personal situation, I would foresee enduring under whatever financial limitations are applicable on the bench.

Senator MATHIAS. We are very pleased that Mrs. Wertheim could be at the hearing this morning. The committee wants to welcome her and to thank her for her concurrence in your decision to accept this new form of public service.

Mr. WERTHEIM. Thank you. I'm very pleased she could be with me.

Senator MATHIAS. That completes the questions I wanted to ask you. Is there anything further that you want to say at this time?

Mr. WERTHEIM. No, sir, other than to express my appreciation to the committee staff, to Eileen Mayer and Peggy Crenshaw, for their assistance and courtesy throughout the committee's consideration.

Senator MATHIAS. Before we dismiss you, let me ask if there is anyone else in the room that has anything to say in connection with this nomination.

[No response.]

Senator MATHIAS. If not, the nomination hearing is closed.

[Whereas, at 10:14 a.m., the committee was adjourned, subject to reconvene at the call of the Chair.]